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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of

Dole for President, Inc.)
and Robert J. Dole, as treasurer,)
Dole/Kemp '96, Inc.)
and Robert J. Dole, as treasurer,)
Dole/Kemp '96 Compliance Committee, Inc.)
and Robert J. Dole, as treasurer,)
Republican National Committee)
and Aléc Poitevint, as treasurer,)
Arizona Republican Party)
and Dean Cooley, as treasurer,)
San Diego County Republican Central Committee)
and John Vogel, as treasurer)
Citizens Against Government Waste)
William Keck)
NTFC Capital Corporation, Inc.)

SENSITIVE

MUR 4382 and MUR 4401

GENERAL COUNSEL'S REPORT #2.

I. ACTIONS RECOMMENDED:

take no further action with respect to six respondents.

II. INTRODUCTION

The purpose of this report is to update the Commission on the investigation of MURs 4382 and 4401

¹ The former treasurer was Robert E. Lighthizer. On December 4, 1998, Dole for President, Inc. submitted a letter from Mr. Lighthizer resigning his position as treasurer. Commission records indicate that this was an amendment to the Statement of Organization, and that the current treasurer is Robert J. Dole.

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In the Factual and Legal Analysis section, the report addresses first the issues arising from only the complaints in MURs 4382 and 4401.

In MURs 4382 and 4401, the Commission found reason to believe that the Primary Committee violated 2 U.S.C. §§ 434(b), 441a(b)(1)(A), 441a(f), and 441b(a). The findings were based on information indicating that certain political committees and non-profit corporations made expenditures on behalf of the Primary Committee. The committees and corporations include:

the Arizona Republican Party ("Arizona Republicans"), the San Diego County Republican Central Committee ("San Diego Republicans"), Citizens Against Government Waste ("CAGW")

Based on the alleged contributions made by the entities, the Commission found reason to believe that these entities violated either 2 U.S.C. §§ 434 and 441a(a)(2) (in the case of political committees) or 2 U.S.C. § 441b (in the case of corporations). The Commission also made findings with respect to allegations concerning activities of the General Committee and the GELAC regarding certain asset transfers between the

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Primary Committee and the General Committee and certain fundraising costs incurred by the GELAC. The Commission found that all of these expenditures were subject to the Primary Committee's overall expenditure limitation.

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III. FACTUAL AND LEGAL ANALYSIS

A. OVERVIEW

A central inquiry throughout various parts of the Factual and Legal Analysis Section of this Report is whether expenditures made by various entities constitute contributions to the Primary Committee that are, therefore, subject to the Primary Committee's expenditure limitation. Although there is some evidence of coordination between the Primary Committee and some of these entities, the evidence in this Report is not presented to establish that other entities made contributions to the Primary Committee in the form of coordinated expenditures. Rather, the evidence herein is presented to provide a broad context in which to examine the underlying facts

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that support the Office of General Counsel's belief that these entities made in-kind contributions on behalf of the Primary Committee that were subject to the Primary Committee's overall expenditure limitation.⁷

By March 1996, the Primary Committee was close to the overall expenditure limitation. As of March 31, 1996, the Primary Committee had reportedly spent \$29,260,000 of its \$30,910,000 expenditure limitation, leaving a balance of \$1,650,000. However, Senator Dole would not receive the Republican Party nomination for the office of President until August 15, 1996. During the period preceding Senator Dole's capture of the Republican Party nomination, other entities incurred expenses on behalf of the Primary Committee that the Primary Committee did not report as subject to the overall expenditure limitation.

⁷ This Office notes that unlike MURs 4553 and 4671, most of the activity involved herein consists of events, not communication.

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B. ISSUES ARISING SOLELY IN MURS 4382 AND 4401

1. MAILING LISTS

The Commission found reason to believe that Citizens Against Government Waste (CAGW) made corporate contributions to the Primary Committee in violation of 2 U.S.C. § 441b(a) by providing the Primary Committee with mailing lists in exchange for Bob Dole's signature, and that the Primary Committee violated 2 U.S.C. § 441b(a) by accepting such prohibited contributions.

In response to the Commission's reason to believe findings and accompanying subpoenas, the Primary Committee asserts that "in exchange for Senator Dole's signature, CAGW gave the Dole campaign the names of donors and others who responded to the letter signed by Senator Dole" and that "the arrangement was part of a bargained-for arms length agreement" and "is a usual and normal practice in the direct mail industry." Primary Committee Response at pgs. 10-11. The Primary Committee argues that "consequently, the transactions between the Dole Campaign ... and CAGW meet in all respects the FEC's test that an exchange of equal value, as determined by industry standards, and were commercially reasonable transactions resulting in no contribution," citing Advisory Opinions 1982-41 and 1981-46. Primary Committee Response at p. 11. Similarly, CAGW argues that "the challenged arrangement between CAGW and Senator Dole

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whereby CAGW provided Senator Dole with the names of individuals who responded to the letters he signed on behalf of CAGW in consideration for his agreement to sign those letters, and thereby endorse CAGW's cause, represented a bargained-for exchange of equal value that is a usual and customary practice in the direct mail industry," CAGW Response at p.1.

According to CAGW, CAGW President Thomas A. Schatz contacted Senator Dole's Majority Leader's office in mid-April of 1995, to determine whether Senator Dole would be interested in signing a letter for CAGW. Senator Dole's staff directed Mr. Schatz to speak with Chip Gately, Director of Marketing for Senator Dole's primary campaign. According to CAGW, Mr. Gately proposed that, in exchange for Senator Dole's signature on the prospect package, CAGW would provide the names generated by the Dole letters to Senator Dole. Further, CAGW asserts that Mr. Schatz asked if Senator Dole would sign the letter without receiving the names in return, and that Mr. Gately told Mr. Schatz that the signature-for-mailing-list exchange was normal practice and that Senator Dole had engaged in this kind of exchange with other nonprofit organizations.

The Primary Committee and CAGW apparently entered and operated under a verbal agreement that was later acknowledged by the Dole campaign in writing on August 26, 1996. According to the acknowledgment, the agreement between the parties was that "in exchange for Senator Dole's signature, CAGW would provide the names generated by its mailings under Senator Dole's signature, which began in June of 1995, to Senator Dole for one-time use only, in accordance with standard direct mail industry practices."

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Regarding the exact number of letters mailed and responded to, CAGW avers that it produced and mailed five prospect packages over the Bob Dole signature, as illustrated below:

	<u>Mailed</u>	<u>Actual Donors</u>	<u>Non-Donors</u>
#1 June 1995	161,557	2,228	6,323
#2 September 1995	326,984	4,213	13,027
#3 January 1995	141,494	1,497	5,083
#4 April 1996	214,392	3,010	8,148
#5 July 1996	<u>400,497</u>	<u>4,021</u>	<u>11,754</u>
Total	1,244,924	14,969	44,335

CAGW asserts that following the first 1995 mailing, it provided the Dole campaign with a list of 2,080 donor names and 5,530 non-donor names who responded to the letter. CAGW avers that it has not transferred the names generated by the second 1995 mailings or the 1996 mailings to the Dole campaign.

Regarding the value of the mailing lists provided to the Primary Committee, CAGW avers that, even if normal market valuation was applied to the exchange, the value of the names provided to Senator Dole was at most \$537, which was calculated based on 5,648 names at the rate of \$95 per thousand names.¹⁴

Finally, in conjunction with its response, CAGW submitted statements from individuals that CAGW states are "leading experts" in the direct mail industry. According to CAGW, the

¹⁴ There appears to be a discrepancy in the number of names CAGW states it provided to the Dole campaign, i.e., 2,080 donor names and 5,530 non-donor names, and the number of names upon which it relies to calculate the value of the names, i.e., 5,648. However, in evaluating the value of the names provided to the Dole campaign, this Office will rely on the number of names that CAGW claims to have provided to the campaign since these figures are clearly stated. By contrast, it is not clear whether CAGW has taken into account unstated factors in using 5,648 to calculate the value of the names.

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statements "unequivocally demonstrate" that the exchange of signatures for the names of the respondents is an exchange of equal value, and that such transactions are considered usual and normal in the direct mail industry.

CAGW's response includes statements from the following individuals that it claims are "experts" within the direct mail industry: Rhonda K. Bell, President, Liberty Lists & Responses, Inc.; Linda L. Fisher, President, Preferred List; Arthur L. Speck, President, Precision Marketing, Inc.; Dan Morgan, President, Dan Morgan, Todd Meredith & Associates; Richard A. Viguerie, President, The American Target Advertising; Steven Winchell, President, Steven Winchell & Associates, Inc.; Richard F. Norman, President, The Richard Norman Company; John Griswold, President, Griswold & Griswold, Inc.; and David A. Keene, Chairman, The American Conservative Union.

Generally, the statements reflect opinions that signing fundraising letters in "exchange" for the use of the names generated thereby is a usual and normal practice within the direct mail industry, and that it is a standard practice in the direct mail industry to consider this an exchange of equal value. The statements also include opinions that a decision to change this practice would have a chilling effect on the ability of nonprofit organizations to educate the public about their mission and to raise funds to support their activities.

As an initial matter, the Office of General Counsel questions whether the Primary Committee provided anything of value to CAGW in consideration for receiving the mailing lists since any value associated with Senator Dole's signature would be an asset belonging to Senator

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Dole, not the Primary Committee. To the extent that Senator Dole implicitly transferred this asset to the Primary Committee, such transfer could not exceed \$50,000. 26 U.S.C. § 9035(a).

In any event, although CAGW has presented information that suggests that an individual's signature in "exchange" for mailing lists may be a usual and normal practice within the direct mail industry, the mailing lists provided by CAGW to the Primary Committee as described herein must be treated as contributions under the Federal Election Campaign Act of 1971, as amended ("the Act"). The Act prohibits corporations from making contributions in connection with any federal election to any political office, 2 U.S.C. § 441b(a), and correspondingly prohibits any candidate or political committee from accepting contributions from a corporation. *Id.* Under the Act, "contribution" is defined as including any direct or indirect payment, distribution, loan (other than from a bank, pursuant to applicable banking law and regulations, in the ordinary course of business), advance, deposit, or gift of money, or any services, or anything of value. 2 U.S.C. § 441b(b)(2).¹⁵

CAGW's provision of mailing lists to the Dole campaign constitutes a payment as well as a conveyance of something of value to the Primary Committee. As noted in Advisory Opinion

¹⁵ The Act does not contain a definition for the term "payment" used in 2 U.S.C. § 441b(a). The term "payment" is defined under the Uniform Commercial Code as "the performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery of money or other value by a debtor to a creditor, where the money or other valuable thing is tendered and accepted as extinguishing debt or obligation in whole or in part." U.C.C. § 2-511.

This Office has relied on the Uniform Commercial Code for guidance in defining the term "payment." The District of Columbia, where both the CAGW and the Primary Committee are headquartered, and presumably where the respondents' agreement was entered, has its own commercial code. See D.C. Code 1981 § 28, Subtitle I. However, the District of Columbia code does not contain a definition for the term payment. *Id.* The written agreement entered by the respondents does not contain any provision regarding the applicable law for interpreting the respondents' transactions.

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1992-40, the Commission has, in limited circumstances, permitted committees to sale their assets without inherent contribution consequences, but only when the assets had ascertainable market value and had been purchased or developed for the committee's own particular use, rather than for sale in a campaign fundraising activity. See Advisory Opinions 1989-4 (mailing lists and computer hardware), 1986-14 (campaign van), 1981-53 (mailing list), 1979-24 (yard sign material and office equipment). The transactions at issue are distinguishable inasmuch as the use of an individual's signature is a unique item with no ascertainable market value, and the transactions at issue were not isolated, but involved an open-ended arrangement whereby CAGW could continue to use Senator Dole's signature as long as it provided mailing lists to the Primary Committee. Therefore, CAGW's payments of such items of value to the Primary Committee constitute contributions from CAGW to the Primary Committee, that were respectively made and accepted in violation of 2 U.S.C. § 441b(a).¹⁶

¹⁶ The respondents argue that the transactions at issue are exchanges of equal value and that it is a usual and normal practice in the direct mail industry to engage in such transactions, citing Advisory Opinions 1982-41 and 1981-46. However, those advisory opinions do not involve the perpetual use of the candidate's signature as consideration for the provision of valuable items to a political committee.

This Office believes the transactions in this matter closely resemble situations considered by the Commission involving the participation of corporations in fundraising activities of political committees. (Expert witnesses called by the Commission in a previous matter testified that mailing lists, which are used by campaigns to generate contributions, are extremely valuable and are often a political committee's greatest asset. See MUR 3638). One example is Advisory Opinion 1992-40, which the Commission likened to other advisory opinions where political committees used committee assets, in that case, "goodwill and party identification," to generate income through ongoing business or commercial ventures. The other opinions cited by the Commission in Advisory Opinion 1992-40 were Advisory Opinion 1991-34 (use of a mailing list and computer equipment to generate funds to maintain the computer system during the non-election year) and 1983-2 (use of the computer on a "fee for services basis" by state committees, political candidates and private businesses). In Advisory Opinion 1992-40, the Commission stated that other than an exception for certain bank loans, there are no explicit exceptions to Section 441b(a) that would permit a corporation to view "the payments it makes to a political committee as consideration for services rendered rather than as prohibited contributions." The Commission noted that a contributor receiving something of value in exchange for a

In light of the fact that these transactions resulted in contributions to the Primary Committee under the Act, this Office believes that contributions in the amount of at least \$722.95 (7,610 names at \$95 per thousand names) resulting from CAGW's provision of mailing lists to the Primary Committee are subject to the Primary Committee's overall expenditure limitation. However, given the relatively small monetary amount associated with CAGW's and the Primary Committee's violations of 2 U.S.C. § 441b(a) discussed in this section, the Office of General Counsel recommends that the Commission take no further action against CAGW and Dole for President, Inc. and Robert J. Dole, as treasurer, with respect to these violations.

2. TRAVEL BY SURROGATE SPEAKERS

In considering MURs 4382 and 4401, the Commission considered evidence suggesting that the Primary Committee deployed "surrogate speakers" to speak on its behalf at the expense of other entities, including the San Diego County Republicans and the Arizona Republicans. Consequently, the Commission found reason to believe that the San Diego County Republicans Central Committee and John Vogel, as treasurer, and the Arizona Republican Party and Dean Cooley, as treasurer, violated 2 U.S.C. §§ 441a(a)(2) and 434(b) in connection with payments made for Elizabeth Dole's travel to Arizona and San Diego.

political contribution in the style of a commercial sale/purchase transaction does not change the contribution nature of the transaction.

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a. Elizabeth Dole

In response to the Commission's subpoena, the Primary Committee submitted documents, including letters, briefing memoranda, travel itineraries, and speech scripts, which reveal the extent and purpose of Mrs. Dole's travel during the primary period. The documents indicate that beginning in November 1995, Mrs. Dole traveled to approximately twenty states throughout the country,¹⁷ making multiple visits to some states, to speak on behalf of Senator Dole's campaign for the office of president of the United States.

The purpose of Mrs. Dole's travel is revealed in, *inter alia*, a fundraising letter dated November 1, 1995, wherein Mrs. Dole declares herself a "full-time volunteer for Bob's campaign for the Presidency."¹⁸ See Elizabeth Dole letter, Attachment 7. She further states in the letter: "While Bob continues to lead the fight on Capitol Hill . . . I will be traveling across the country on his behalf." *Id.* Moreover, Scott Reed, the manager of Senator Dole's 1996 campaign, testified that beginning at the end of 1995 or early 1996, Mrs. Dole became the campaign's "top surrogate speaker" and traveled regularly in that capacity. Scott Reed Deposition in MURs 4553 and 4671 at p.52.

In addition to direct statements that Mrs. Dole was traveling on behalf of Senator Dole's campaign, the record contains various other indicia of the campaign-related purpose of her travel.

¹⁷ These states include: North Carolina, South Carolina, Pennsylvania, Illinois, Ohio, Florida, California, Mississippi, Michigan, Georgia, Connecticut, Texas, New Jersey, New York, Kansas, New Mexico, Louisiana, Tennessee, and Kentucky.

¹⁸ The available information shows that Mrs. Dole temporarily resigned from her full time duties at the American Red Cross, where she was president, to devote more time to Senator Dole's campaign.

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The Primary Committee submitted briefing memoranda that apparently prepared Mrs. Dole for her appearances at various events. In addition, the texts of some of the speeches apparently delivered by Mrs. Dole during these trips contain statements advocating the election of Senator Dole for the office of president. Moreover, itineraries reflect that when Mrs. Dole made speeches and remarks at events throughout the country, the video "Bob Dole: An American Hero" was frequently played before she spoke.¹⁹

Although the record reflects that the purpose of Mrs. Dole's travel during the primary period was to campaign for Senator Dole, the documents provided by the Primary Committee indicate that a significant portion of Mrs. Dole's travel expenses and the expenses of a personal staff traveling with her were paid by various state party committees. In the same spending pattern that can be observed with respect to Senator Dole's advance staff, the Primary Committee's spending for Mrs. Dole and her personal staff's travel expenses dropped significantly after March of 1996, as the Primary Committee approached its expenditure limitation. Thereafter, payments for the costs of Mrs. Dole's and her staff's travel expenses were made by other state parties.²⁰

¹⁹ "Bob Dole: An American Hero" is a thirteen-minute video paid for by the Primary Committee. Senator and Mrs. Dole appear in the video and describe the Senator's personal history and agenda for the future of the country. The video portrays Senator Dole as a man with admirable values who will make the American people proud if he is elected president. The RNC used footage from this video to produce the advertisement entitled "The Story," which is one of the advertisements at issue in MURs 4553 and 4671. In MURs 4553 and 4671, the RNC asserts that "The Story" is a generic advertisement and not a campaign advertisement.

²⁰ According to figures prepared by the Audit Division, the Primary Committee spent \$92,296.89 on costs related to Mrs. Dole's travel between November 1995 and March 1996, but only \$20,828.37 between April and August 1996.

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For example, the record shows that in April 1996, the San Diego Republicans paid for Mrs. Dole to travel to San Diego and the RNC and the Arizona Republicans shared the costs of the expenses for Mrs. Dole's travel to Phoenix, Arizona. The record indicates that Mrs. Dole traveled to San Diego and Phoenix on behalf of the Primary Committee. In addition to the fundraising letter indicating her intended efforts on behalf of Senator Dole, the itinerary for Mrs. Dole's trip to San Diego includes the notation: "Mrs. Dole has not visited San Diego for DFP," presumably the Dole for President Committee. The notation continues: "Sen. Dole was in San Diego on March 23, 1996." Thus, individuals apparently arranging Mrs. Dole's travel were concerned with her prior travel to San Diego for the Primary Committee. This too suggests that Mrs. Dole spoke at a San Diego Republican event because she was campaigning and not merely as a representative of the Republican Party. In addition, the documents produced include the text of a speech that Mrs. Dole apparently made at an event honoring Senator Barry Goldwater while she was in Arizona. She apparently said: "Both Bob Dole and Barry Goldwater agree that Bob Dole should be President."

The Primary Committee produced documents that indicate that various state party committees paid for Mrs. Dole's travel to other destinations during the primary period. For example, from May 16 through May 18, 1996, Mrs. Dole traveled to California, Missouri and Michigan. Each state party paid for hotels, rental cars and event expenses independently

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The San Diego Republicans acknowledge that they paid \$3,097.86 in connection with Elizabeth Dole's travel to San Diego, California, to speak at a San Diego Republican fundraising event. However, the San Diego Republicans maintain that they had sought to have Mrs. Dole as

well as numerous other prominent Republicans as guest speakers and that when Mrs. Dole eventually appeared at the April 24, 1996 event, her appearance was solely for the purpose of raising funds for the San Diego Republicans. The San Diego Republicans acknowledge that Mrs. Dole stated during her appearance at the event that "I think you need to elect Bob Dole." However, they argue that any benefit that the Primary Committee received is marginal.

Similarly, the Arizona Republicans acknowledge making expenditures totaling \$3,687.26 in connection with Mrs. Dole's travel to Arizona. The Arizona Republicans explain that these payments reflect "one half of the travel and lodging expenses incurred by Elizabeth Dole and support personnel in connection with her appearance at an [Arizona Republican] party-building and fund raiser on April 26, 1996."

The Arizona Republicans explain that they "wanted to capitalize upon Mrs. Dole's personal popularity to draw the Republican faithful to the fund-raiser, so that the [Arizona Republicans] could raise funds from the party faithful."

Under the Commission's regulations, even if Mrs. Dole traveled to events hosted by a state party committee, the travel expenses she incurred would be qualified campaign expenditures of the Primary Committee if her travel related to Senator Dole's campaign. See 11 C.F.R. § 9034.7. In light of the foregoing information, the Office of General Counsel believes that the expenses incurred by Mrs. Dole in connection with her travel to San Diego, California and Phoenix, Arizona, which total at least \$6,785.12, are subject to the Primary Committee's overall

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expenditure limitation.²¹ However, given the relatively small monetary amount known to be associated with these violations and the substantial amount of resources that would be needed to substantiate additional related activity, this Office recommends that the Commission take no further action against the Arizona Republican Party and Dean Cooley, as treasurer, the San Diego County Republican Central Committee and John Vogel, as treasurer, and Dole for President, Inc. and Robert J. Dole, as treasurer, with respect to these violations.

²¹ While the record suggests that Mrs. Dole, acting as a surrogate speaker, traveled extensively on behalf of Senator Dole's campaign, and the RNC and various Republican state parties bore the associated costs, the record is indefinite on the amount of the associated expenses and who paid them. Obtaining this information would be particularly resource intensive, requiring additional subpoenas to the RNC as well as subpoenas to numerous state parties. This Office does not believe that seeking this additional information is worth expending the amount of resources needed to do so.

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2. IMPROPERLY VALUED ASSETS

The Commission found reason to believe that the General Committee violated 11 C.F.R. § 9004.4(a) and 2 U.S.C. § 434(b) in connection with its purchasing from the Primary Committee media footage that was not used in the general election, and purchasing mailing lists from the Primary Committee at an inflated value.

a. The Law

Under the Commission's regulations, any expenditure for goods or services that are used exclusively for the primary election campaign shall be attributed to the limits set forth at 11 C.F.R. § 9035.1. 11 C.F.R. § 9034.5(e). Any expenditure for goods or services that are used exclusively for the general election campaign shall be attributed to the limits set forth at 11 C.F.R. § 110.8(a)(2), as adjusted under 11 C.F.R. § 110.9(c). *Id.* The Commission's regulations, however, also provide for various methods to allocate certain expenditures that benefit a candidate's primary and general election campaigns. See 11 C.F.R. § 9034.3(e).

In the case of media expenditures, the Commission's regulations provide that the media communications that are broadcast or published before and after the date of the candidate's

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nomination, 50% of the media production costs shall be attributed to the primary limits, and 50% to the general election limits. 11 C.F.R. § 9034.4. The Explanation and Justification explains that the "pre and post nomination communications need not be identical for this attribution ratio to apply." The Commission's regulations further provide that distribution costs, including such costs as air time and advertising space in newspapers, shall be paid for 100% by the primary or general election campaign depending on when the communication is broadcast or distributed. 11 C.F.R. § 9034.4(e)(5).

The Commission's regulations also specifically provide for methods of valuing a committee's assets that are transferred from the candidate's primary campaign to the general election campaign. 11 C.F.R. § 9034.5(c). Under the Commission's regulations, a primary committee's capital assets that are purchased before the candidate's date of ineligibility can be transferred to the general committee at a price established as the total original cost of such items when acquired less 40%, to account for depreciation. *Id.* Capital assets that are purchased after the candidate's date of ineligibility must be valued at their fair market value on the date received. All other primary committee assets are valued at the fair market value of each item on the date it is acquired by the general committee. *Id.*

The Commission's regulations define a capital asset as any property used in the operation of the campaign whose purchase price exceeded \$2,000 when received by the committee. 11 C.F.R. § 9034.5(c)(1). The regulations further provide that property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles

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and fixtures acquired for use in the operation of the candidate's campaign, but does not include "other assets" under 11 C.F.R. § 9034.5(c)(2). 11 C.F.R. § 9034.5(c)(1). The term other assets means any property acquired by the committee for use in raising funds or as collateral for campaign loans. 11 C.F.R. § 9034.5(c)(2).

b. Discussion

1. Dole Supporter List

The issue of the Primary Committee selling a supporter list to the General Committee at an inflated price was originally raised in the complaint in MUR 4382. However, information regarding this issue was specifically developed in the context of the audit of the Primary Committee and the General Committee. According to Audit Referral #99-14, the Primary Committee transferred supporter lists to the General Committee in exchange for \$324,817 on May 31, 1996. This represented the Primary Committee's calculation of half of the list development costs. An additional \$53,957 was wired on July 2, 1996 to the Primary Committee from the General Committee. A recalculation of the list value accounted for this transfer. In the documentation accompanying the second payment, the Primary Committee and the General Committee value the lists at 60% of the cost of 828,227 names at \$.40 per name and 60% of estimated development costs of \$300,000. From this, the Audit staff concluded that the committees regarded the lists as capital assets and transferred them as such under the provisions of 11 C.F.R. § 9034.5(c)(1). However, the General Committee neither reported a subsequent sale of

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the supporter list nor included them as an asset on its statement of Net Outstanding Qualified Campaign Expenses.

Using the Primary Committee's costs, their valuation of the supporter list is approximately \$.76 per name or \$760 per thousand names.²⁹ The Primary Committee argued in the context of the audit that it is standard industry practice to establish a price per supporter name by dividing the total cost of a supporter program by the total number of names generated by such program. The Primary Committee asserted that the total number of names generated by the Dole Supporter program was 876,087, and that at \$0.40 per name, \$350,435 was the fair market value of the list. Thus, the Primary Committee concluded that \$28,340 should be added to the Primary Committee's spending limitation.

The Primary Committee cited a memorandum from Campaign Tel Ltd (CTL) which notes that "the .40 cent pricing of the 1996 records" is a "price as any other industry 'price per record' [and] is based on the following formula: Total cost of program dollar amount divided by the number of favorables generated." CTL goes on to state that this, referring to the derivation of the unit cost, is an industry standard. The Primary Committee citing this industry standard, reverses the derivative process by multiplying the number of names on the lists by the "industry standard" .40 cents and arrives at the cost of the list and then, in a *non sequitur*, equates this unit cost with

²⁹ Primary Committee representatives maintained that the supporter list is not the Primary Committee's donor list. According to Audit Staff, donor lists are generally perceived to be more valuable than supporter lists because donor list contain the names of individuals who have not only expressed support, but who have also made monetary donations.

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the fair market value. However, at no point in its memorandum does CTL address fair market value or suggest that a cost of .40 cents per name is a reflection of fair market value.

The Audit Division consulted the SRDS Direct Marketing List Source, June 1998, Volume 32 Number 3, a catalog of thousands of available lists, to make a final valuation of lists comparable to the Dole supporter lists. Donor lists, which the Dole supporter list is not, were first considered. Clinton-Gore '96 contracted with Names in the News/California, Inc., a list management company, to manage and offer for public use the campaign's active donor list. The price charged was \$80.00 per thousand names, substantially less than \$760 per thousand. The "Republican-Solid GOP Donors" list was available for \$100.00 per thousand names [\$0.10 per name]. The Dole Donors (\$5 to \$500) list was valued at \$125.00 per thousand [\$0.085 per name]. In the category of support lists, there is a "Run Pat Run!" list of supporters of Pat Buchanan which was available for \$100.00 per thousand. Based on this and the market value of the Clinton campaign's donor lists, the Office of General Counsel believes that the Dole supporter lists cannot be reasonably valued at more than \$100 per thousand names. The Primary Committee included in its response documentation from CTL which listed the total number of names on the list as 876,087.³⁰ Accordingly, the estimated fair market value at which the list may have been transferred to the General Committee is not more than \$87,609 (876,087 names multiplied by \$100.00 per thousand names). In the context of the audit, the Commission, accepting the Primary

³⁰ The number of names attributed to the list by the Primary Committee has not been a constant. Each time the lists were valued, the number has changed. When the lists were transferred on May 27, 1996 to the General Committee, transfer documentation stated that the lists contained 874,085 names. When the transfer was adjusted on July 2, 1996, the supporting calculation indicated that there were 828,227 names on the lists.

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Committee's valuation of the list over the valuation derived by the Audit Division, voted that the valuation assigned to the lists be equal to half of the list cost documented, \$150,000 (\$300,000 x 50%).³¹ Thus, the Primary Committee received an in-kind contribution in the amount of \$228,774 (\$378,774 - \$150,000). Since this represents a contribution to the Primary Committee, the Office of General Counsel believes that \$228,774 is subject to the Primary Committee's expenditure limitation.

2. Film Footage

The issue of the Primary Committee impermissibly selling film footage to the General Committee was originally raised in the complaint in MUR 4382. However, information regarding this issue was also developed in the context of the audit of the Dole committees. According to Audit Referral #99-14, the Primary Committee transferred film footage to the General Committee on May 31, 1996 for \$266,086. The Primary Committee later reduced the valuation of the transfer to \$189,081 and an appropriate amount was refunded. The amount paid represented one half of the production costs (\$155,942) as calculated by the Primary Committee, and one half of associated focus group costs (\$33,139) for 14 of the Primary Committee's commercials that were also used by the General Committee.

Documentation provided shows that fourteen primary commercials were transferred to the General Committee. Records also establish that each was broadcast at least once in the general election period. Examples of placements were "Historic Reforms" shown once at 6:18 A.M. on

³¹ On February 3, 1999, the Commission decided by a vote of 5-1 to amend the Audit Division's recommendation that the Primary Committee received a \$291,165 contribution from the General Committee to determine that the Primary Committee received a \$228,774 contribution from the General Committee.

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September 18, 1996, in Bismarck, North Dakota and "American Hero" shown once at 7:35 A.M. on September 16, 1996, in Sioux City, Iowa. For an expenditure of only \$455, the General Committee ran all fourteen commercials and met the requirement for primary and general cost sharing.

The documentation failed to establish a connection between the commercials and some of the production costs. The Audit staff could only associate \$54,193 of the production costs with the commercials used by the General Committee. Similarly, \$28,684 of the focus group costs were associated with the commercials. Thus, the Primary Committee transferred \$101,749 (\$155,942 - \$54,193) in production costs and \$4,455 (\$33,139 - \$28,684) in focus costs more than the documentation supported. In this transaction, the Primary Committee received \$106,204 (\$101,749 + \$4,455) in excess of the asset value transferred to the General Committee.

The Primary Committee responded, in the audit context, that the invoices it submitted demonstrate that twelve of the fourteen advertisements whose production costs were assessed to the General Committee were aired during the general election, and that there has been some confusion generated by the remaining two ads because the production code numbers assigned to those ads changed after the ads were edited by the Primary Committee. The Primary Committee explained that original pre-edit code numbers were used when the ads were transferred to the General Committee. The Primary Committee further asserted that contemporaneous memoranda that it submitted establish that the remaining two ads transferred to the General Committee whose production costs were charged to the General Committee were also aired during the general

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election. Thus, the Primary Committee concluded \$106,204 should not be added to the Primary Committee's spending limit.

However, the Primary Committee did not address the underlying problem, *i.e.*, the lack of documentation which would establish a direct connection between the film production costs and the commercials run. See 11 C.F.R. § 9034.4(e)(5). Of the \$311,883 in total production costs, only nine of thirty-four invoices in amounts totaling \$108,384 had been specifically identified with any of the fourteen commercials in question.³² No documentation was provided that would warrant an increase in the amount of the production costs to be transferred to the General Committee. Similarly, the Primary Committee identified focus group costs of \$66,281 which it maintains were related to the production of the commercials. Of this amount, the Audit Division identified \$57,369 related to the fourteen commercials from the description on the documentation provided. Based on the foregoing, the Office of General Counsel believes that \$101,749 (\$155,942 - \$54,193) in production costs and \$4,455 (\$33,139 - \$28,684) in focus group costs were improperly reimbursed to the Primary Committee by the General Committee. Consequently, this Office believes that equal amounts, which total \$106,204, are subject to the Primary Committee's expenditure limitation.

³² It appears that a portion of the Primary Committee's library of film footage is being attributed to these commercials as well. The cost of establishing a library of film footage is not part of the cost of producing these particular commercials. To permit such a calculation would require a recalculation of the cost of a particular commercial each time a portion of that footage was used by either the primary or the general election campaign.

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5. Primary Expenses Paid by Related Committees

(I). Primary Expenses Paid by the GELAC

Section 9034.4(e)(3) of the Commission's regulations provides that overhead expenditures and payroll costs incurred in connection with national campaign offices shall be attributed according to when the usage occurs or the work is performed. 11 C.F.R. § 9034.4(e)(3). Section 9034.4(e)(3) further provides that expenses for usage of offices or work performed on or before the date of the candidate's nomination shall be attributed to the primary election, except for periods when the office is used only by persons working exclusively on general election campaign preparations. Based on the structure of the provision, Section 9034.4(e)(3) appears to place the burden upon respondents seeking to attribute expenses in variance with the provision's bright-line rule to establish that such expenses were incurred during periods when the office was used only by persons working exclusively on general election campaign preparations. See 11 C.F.R. § 9034.4(e)(3).

The Commission found reason to believe that the GELAC violated 11 C.F.R. § 9003.3(a)(2) and 2 U.S.C. § 434(b) in connection with disbursements made for primary expenses. Audit Referrals #99-14 and #99-17 both address the same primary expenses paid by the GELAC.³³ During the audit of the General Committee, the Audit staff reviewed the financial activity of the GELAC. The audit referrals state that between the time the GELAC registered with

³³ Primary Committee expenses paid by the GELAC is the only issue contained in Audit Referral #99-17. This issue is also contained in Audit Referral #99-14, which contains several other issues as well. The issue of Primary Committee expenses paid by the GELAC was placed in two separate audit referrals because a potential violation of law is associated with both the committee that made improper contributions and to the committee that accepted the contributions. 7

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the Commission on February 15, 1995, and the candidate's date of ineligibility, the GELAC spent \$1,405,245 and shared staff and offices with the Primary Committee. In January 1996, GELAC began paying salaries to staff formerly paid solely from the Primary Committee's fund-raising accounts, and began soliciting direct contributions.

Of the GELAC disbursements made prior to the candidate's date of ineligibility, the Audit staff identified expenditures of \$454,404 attributable to the Primary Committee. Of the \$454,404 in disbursements, salaries accounted for \$210,262 and overhead \$115,302. Overhead expenses included office supplies, computer hardware and software, telephone costs, and charges for other office equipment. Under 11 C.F.R. § 9034.4(e)(3), these salary and overhead expenses are viewed as primary campaign expenses unless it could be demonstrated that they related to periods devoted exclusively to the general election effort. According to the audit referrals, no such showing was made.

The balance of the GELAC disbursements that the Audit referral attributed to the Primary Committee, \$128,839, was for travel, including some expenses related to attending the Republican National Convention, and the Primary Committee's share of joint solicitation costs. Approximately \$93,000 of the \$128,839 was spent on two fundraising projects. On April 11 and 12, 1996, the Primary Committee held a series of fundraising events in Memphis, Tennessee, and Dallas, San Antonio and Houston, Texas, described by the Primary Committee as a compliance trip. All associated costs, including advance travel costs, air charter expense, plane catering, ground transportation, press filing center costs and solicitation costs, were paid by the GELAC.

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An invitation for the Memphis event contained a joint solicitation for the Primary Committee and for the GELAC. This, along with the fact that over 70% of the contributions received and attributed to these fundraisers were deposited into primary accounts, establish that the events were joint solicitations. As a result, travel costs of \$57,267, are primary expenses pursuant to 11 C.F.R. § 9034.4(e)(7). Additionally, half of all solicitation costs related to the fundraisers, \$32,603 are Primary Committee expenses pursuant to 11 C.F.R. § 9034.4(e)(6).

According to the audit referrals, the second instance of a joint solicitation funded by the GELAC was a "Lawyers for Dole" event held in Chicago on July 19, 1996. A solicitation device for this event requested contributions for both the Primary Committee and the GELAC. This time 45% of the receipts attributed to this event, \$58,675, were deposited in the primary accounts. The GELAC paid \$2,887 of the Primary Committee's share of the solicitation costs.

During the audit process, the Primary Committee was provided a schedule of the GELAC expenditures identified as having been made on behalf of the Primary Committee. In response to the Exit Conference Memorandum, the Primary Committee asserted that documents it submitted establish that payments made by the GELAC were for expenditures for overhead and salaries incurred exclusively for the benefit of the GELAC, and that the Audit staff focused on costs incurred for facilities and expanded work space that would be used by the GELAC exclusively in the general election campaign. Regarding the fundraisers in Texas and Tennessee, the Primary Committee asserted that it had pro-rated between the Committees the costs of the fundraisers and travel thereto in accordance with the Commission's regulations at "11 C.F.R. § 9034.4." See 11

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C.F.R. § 9034.4. The Primary Committee further asserted that when travel costs were related to a dual fundraising purpose, the Primary Committee diligently followed the Commission's procedure for allocating such expenditures between the Primary Committee and the GELAC, and that, therefore, only \$35,317 is owed to the GELAC and only \$35,317 should be added to the Primary Committee's expenditures subject to the expenditure limitation.

The Primary Committee's response consisted of copies of documents such as invoices, check requests and tissue copies of the checks that were reviewed during the audit field work. None of the documents show that expenditures made by the GELAC were exclusively for general election purposes. Audit Referrals #99-14 and #99-17 state that during the period in question, the GELAC was principally engaged in fundraising done jointly between GELAC and the Primary Committee.

Additionally, as noted, the GELAC disbursements the Audit staff identified as attributable to the Primary Committee included \$210,262 for salaries and \$115,302 for overhead. The balance, \$128,839, was for travel, *i.e.*, some expenses related to attending the Republican National Convention and the Primary Committee's share of joint solicitation costs. Thus, contrary to the Primary Committee's assertion, the GELAC expenditures at issue were not predominantly "costs incurred for facilities and expanded work space."³⁴

³⁴ The Primary Committee conceded that some of the costs associated with the fundraisers in Texas and Tennessee should have been allocated, including a portion of the related travel expense. For the allocation of travel expenses, the Primary Committee cited 11 C.F.R. § 9034.7. However, that regulation provides for the allocation of travel costs between campaign and non-campaign purposes and the use of government conveyance. These subjects are not at issue in this matter.

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In light of the foregoing information, and the Primary Committee's failure to demonstrate that GELAC was exclusively engaged in activity related to the general election, the Office of General Counsel believes that the disbursements of \$377,186³⁵ made by the GELAC are subject to the Primary Committee's expenditure limitation.

(ii). Primary Expenses Paid by the General Committee

The Commission found reason to believe that the General Committee violated 11 C.F.R. § 9004.4(a) and 2 U.S.C. § 434(b). During the course of the audit of the Primary Committee, the Audit staff identified expenditures made by the General Committee on behalf of the Primary Committee between June 17, 1996 and August 14, 1996, the beginning of the expenditure report period. These expenditures, which totaled \$207,378, were for goods, facilities and services used in the primary period.³⁶ The campaign has not demonstrated an exclusive general election purpose for these expenditures. The pre-expenditure report period General Committee disbursements include:

\$58,786 for telephone service, installation, and equipment;
\$80,288 for office furniture and equipment;
\$36,173 for utilities;
\$ 6,588 for collateral materials;
\$11,552 for HQ security;
\$ 8,550 for supplies;
\$ 4,186 for convention related expenses; and

³⁵ This amount reflects a \$521 offset to the amount attributed to the Primary Committee's spending limitation based on documentation provided by the Primary Committee, and an adjustment based on the fact that salaries of fundraising personnel may be included in the costs of joint solicitations. (\$454,404 - \$521 refund - \$76,697 in fundraising salaries).

³⁶ The General Committee registered with the Federal Election Commission on May 3, 1996. Between June 17, 1996 and August 14, 1996, the beginning of the expenditure report period, the General Committee spent a total of approximately \$416,000.

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\$ 1,255 for miscellaneous expenses

During the audit process, the Primary Committee was provided a schedule of General Committee expenditures identified as having been made on behalf of the Primary Committee. The Primary Committee responded, in relevant part, that expenditures made prior to the date of the Republican Party convention were allocated to the general election if those expenditures were made exclusively for general election purposes. The Primary Committee argued that the expenditures singled out by the Audit staff were for facilities, including furniture, supplies, and equipment and the build-out of the office space necessary to accommodate the larger campaign staff obtained for the general election. The Primary Committee provided a statement by Andrew Mack, the campaign's Deputy Director for Administration, which explains that the general election committee had to begin preparation for the general prior to the date of Senator Dole's nomination so that the Committee staff would have facilities and equipment with which to work once the general election campaign began. Thus, the Primary Committee concluded, given the exclusive general election purpose for which almost all of the pre-convention expenditures were made, they must be attributed to the general election.

In addition, the Primary Committee asserted that upon review, it determined that \$1,543.16 should have been paid by the Primary Committee, but that the remaining \$262,054.65 is not owed to the General Committee and should not be subject to Primary Committee's expenditure limitation.

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According to the audit referral, the documentation provided consists of copies of invoices with the associated check requests and tissue check copies; the same documentation that was originally reviewed to ascertain that the General Committee had made disbursements on behalf of the Primary Committee, and Andrea Mack's statement explaining that the campaign was in the process of gearing up for the general election.

Although the Primary Committee argues that the various expenses enumerated above were exclusively for the general election, none of the campaign staff was paid by the General Committee prior to Senator Dole's nomination. In addition, the cost of renovations to the tenth floor of the building that served as the campaign headquarters of both the Primary Committee and the General Committee was allocated equally between the Primary Committee and the General Committee.³⁷ Further, while the campaign may have been engaged in preparations for the general election during July and August of 1996, as Ma. Mack asserts, and as is permitted pursuant to Section 9003.4 of the Commission's regulations, see 11 C.F.R. § 9003.4(a), Senator Dole's travel schedule and necessary preparations for the convention indicate that the primary campaign was also continuing during the July - August 1996 time period.

Inasmuch as the Primary Committee has not established that the campaign headquarters were being used exclusively in general election preparation, the Office of General Counsel believes that salary and overhead expenses up to the date of nomination in the amount of \$138,743 are attributable to the Primary Committee's expenditure limitation. See 11 C.F.R. § 9034.4(e)(3).

³⁷ The Primary Committee's share was paid by the Republican National Committee as a coordinated expenditure.

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2. KECK AIRCRAFT

a. The Law

No person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a; 2 U.S.C. § 110.1(b)(1). The Commission's regulations state that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 11 C.F.R. 100.7(a)(1). The term "any thing of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii).

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Unless specifically exempted under 11 C.F.R. § 100.7(b), the provision of services at a charge which is less than the usual and normal charge for such service is a contribution. 11 C.F.R. § 100.7(a)(1)(iii)(A). If services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the services and the amount charged to the political committee. *Id.* The usual and normal charge for any services other than those provided by an unpaid volunteer means the hourly charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. 11 C.F.R. § 100.7(a)(1)(iii)(B).

A candidate who uses an airplane which is owned or leased by a corporation not licensed to provide commercial service for travel in connection with a Federal election must, in advance, reimburse the corporation the first class air fare where regular commercial service is available and where no regular commercial service exists, the usual charter rate. 11 C.F.R. § 114.9(e). The Financial Control and Compliance Manual, an FEC publication providing guidance for presidential primary candidates receiving Federal funds, cautions that the reimbursement rate for the use of aircraft owned by individuals is the usual and normal charge for services provided. Financial Control and Compliance Manual, at 162. Usual and normal charges in such instances will generally be the equivalent charter rate for the means of transportation used. *Id.*

b. Discussion

During the audit of the Primary Committee, the Audit staff became aware that a Gulfstream IV jet aircraft, personally owned by William Keck, was used by Senator Dole and his campaign for

travel from May 28 through June 2, 1995. Senator Dole and his campaign staff, according to a Primary Committee itinerary, made at least nine flights⁴¹ on the airplane paying first class airfare for each member of its entourage for each flight leg. The total reimbursed to Mr. Keck was \$17,225.⁴²

In the context of the audit, the Primary Committee argued that the flights were entitled to treatment under 11 C.F.R. § 114.9(e) because the airplane functioned as the corporate jet for Coalinga Corp. despite the fact that it was privately owned. In response to Audit staff inquiries, Patrick Templeton, Washington Representative for Coalinga Corp., wrote:

Senator Dole's campaign travel on an aircraft registered in the name of William Keck is properly reimbursable at first class rates. The aircraft functioned as the corporate jet for Coalinga Corp., a subchapter S corporation which is a diversified holding company wholly owned by Mr. Keck. The aircraft was registered in Mr. Keck's name rather than in the name of Coalinga Corp., dictated by tax law considerations. If Mr. Keck, as a Coalinga employee, or any other Coalinga employee, needed a jet for corporate business, they used the aircraft in question. Also, Coalinga's Washington representative traveled on the aircraft every time Senator Dole or any other public official traveled on the plane (except in one instance).⁴³

⁴¹ According to the referral, the nine trips were Washington, DC to Manchester, NH; Concord, NH to Boston, MA; Boston, MA to Chicago, IL; Chicago, IL to San Francisco, CA; San Francisco, CA to Los Angeles, CA; Irvine, CA to Las Vegas, NV; Las Vegas, NV to Phoenix, AZ; Phoenix, AZ to Tucson, AZ; and Tucson, AZ to Washington, DC. A second itinerary suggests that an additional flight with passengers occurred between Santa Monica, CA and Santa Ana, CA (Irvine, CA).

⁴² The Audit referral reflects that the Primary Committee wrote two checks for the flight. The first check was dated May 25, 1995, but was made out to Coalinga Corp. Because Mr. Keck personally owned the plane, a second check was requested. The date of the check written to Mr. Keck was June 2, 1995.

⁴³ None of the itineraries lists a Coalinga Corp. employee as passenger for the flights made by Senator Dole and his staff.

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In order for the use of an airplane to qualify under the provisions of 11 C.F.R. § 114.9(e), the airplane must be either owned or leased by a corporation. Coalinga Corp. through its Washington Representative concedes that the plane was not owned or leased by a corporation. The Primary Committee acknowledges that the aircraft was owned personally by Mr. Keck. Since Section 114.9(e) applies only to aircraft owned or leased by a corporation or labor organization, and no evidence of any lease agreement between Mr. Keck and Coalinga Corporation was presented, 11 C.F.R. § 114.9(e) does not apply to the use of this aircraft. Thus, the Primary Committee's use of this airplane should have been reimbursed on the basis of the usual and normal cost for a similar charter. 11 C.F.R. § 100.7(a)(1)(iii)(A).

In determining the usual and normal cost for such flights, the Audit staff relied on quotes from KaiserAir, Inc.⁴⁴ KaiserAir, Inc. quotes an hourly charter rate of \$4,500 for the use of a Gulfstream IV. In addition to the nine identified flights, four positioning flights are included in the calculation of total flight hours. The Audit Division computed the usual and normal costs of chartering this trip by multiplying the advertised hourly charter rate by the total flight hours as listed on the KaiserAir itinerary. The airplane flew 26.3 reimbursable hours for the campaign and the usual and normal charge should have been \$118,350 (26.3 hrs. x \$4,500 per hr.). The Primary Committee paid \$17,225 for the use of the airplane and therefore received an in-kind contribution from Mr. Keck of \$100,125 (\$118,350 less the already paid \$17,225 and a contribution allowance

⁴⁴ The Audit Division relied upon KaiserAir, Inc. in establishing the usual and normal cost of similar flights because KaiserAir, Inc. managed Keck's aircraft as well as the airplanes of many companies.

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of \$1,000).⁴⁵ 11 C.F.R. § 100.7. Since this represents an in-kind contribution to the Primary Committee, the Office of General Counsel believes that this matter is subject to the Primary Committee's overall expenditure limitation.

Consequently, the Office of General Counsel recommends that the Commission find reason to believe that William Keck violated 2 U.S.C. § 441a(a) by making this excessive in-kind contribution. This Office further recommends that the Commission approve the attached Factual and Legal Analyses, which provide additional bases for the Commission's reason to believe findings that the Primary Committee violated 2 U.S.C. §§ 441a(f), 434(b), and 26 U.S.C. § 9035(a). However, in light of the expiration on June 2, 2000, of the statute of limitations at 28 U.S.C. § 2462 with respect to this activity, this Office recommends that the Commission take no further action with respect to this activity.

⁴⁵ During the audit process, the Primary Committee stated that at the time the aircraft was not being used as a charter aircraft, but as a corporate aircraft in all respects except formal title. Citing the aircraft's tail number, the Primary Committee stated that it had no way of knowing that the plane was not a corporate aircraft, and pointed out that others, including members of Congress have used the plane, reimbursing flights at rates provided for at 11 C.F.R. § 114.9(e). Further, the Primary Committee argued that payment of a charter rate for flights to cities with commercial service is not appropriate, citing 11 C.F.R. §§ 114.9(e), 9004.7(b)(5)(i). The Primary Committee also argued that, even if the charter rate is the correct valuation method, the auditors relied on an erroneous charter rate and erred in including charges for positioning flights or "dead-head time." However, the application of 11 C.F.R. § 114.9(e) is limited to those situations where the aircraft is owned or leased by a corporation. See Advisory Opinion 1979-52 (Campaign use of aircraft owned by corporation in which candidate was sole stockholder is subject to 11 C.F.R. § 114.9(e)). Therefore, the Primary Committee cannot pay first class airfare unless the aircraft is owned or

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The Office of General Counsel recommends that the Commission take no further action against the General Committee in connection with violations of 11 C.F.R. § 9004.4(a), which prohibits candidates from using public funds for non-qualified campaign expenses, and against the GELAC in connection with violations of 11 C.F.R. § 9003.3(a)(2), which prohibits the GELAC from using funds for purposes other than those specifically delineated. This Office considers the fact that these items are accounted for in the Commission's repayment determinations as mitigating circumstances warranting no further action against these respondents.⁵¹ In addition, given the expiration of the statute of limitations at 28 U.S.C. § 2462 with respect to activity involving the excessive in-kind contribution to the Primary Committee from William Keck, this Office has recommended that the Commission take no further action in connection with this activity.

⁵¹ In the context of the audit of the 1996 Dole campaign committees, the Commission determined that the General Committee incurred non-qualified campaign expenses in the amount of \$574,158 by making expenditures on behalf of the Primary Committee. The General Committee did not seek review of this Commission determination during the administrative review process. The Audit Report notes that the General Committee must repay the \$574,158 to the United States Treasury unless the Primary Committee transfers such funds to the General Committee. To date, no evidence of any such transfer has been submitted to the Commission (the 1996 Dole campaign committees have not filed a disclosure report with the Commission since September 30, 1999). With respect to the GELAC, the Commission determined that the Primary Committee must pay \$403,364 to the GELAC in connection with primary expenses or improperly valued primary assets paid for by the GELAC.

VI. RECOMMENDATIONS

Find reason to believe that William Keck violated 2 U.S.C. § 441a(a)(1)(A), and take no further action with respect to this respondent.

Take no further action against Citizens Against Government Wastes.

Take no further action against the Arizona Republican Party and Dean Cooley, as treasurer.

Take no further action against the San Diego County Republican Central Committee and John Vogel, as treasurer.

Take no further action against Dole/Kemp '96, Inc., and Robert J. Dole, as treasurer.

Take no further action against Dole/Kemp '96 Compliance Committee, Inc., and Robert J. Dole, as treasurer.

Approve the appropriate letters.

8/2/00
Date


Lawrence M. Noble.
General Counsel

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